



Testimony of  
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**Connecticut AFL-CIO**

Judiciary Committee

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***SB 440 An Act Protecting Employee Freedom of Speech and Conscience***

Good afternoon Senator Winfield, Representative Stafstrom and members of Judiciary Committee. My name is Sal Luciano and I am proud to serve as the President of the Connecticut AFL-CIO, a federation of hundreds of local unions representing more than 220,000 members in the private sector, public sector, and building trades. Our members live and work in every city and town in our state and reflect the diversity that makes Connecticut great. Thank you for the opportunity to testify today in support of SB 440 An Act Protecting Employee Freedom of Speech and Conscience.

Arguably cherished most among all rights afforded to American citizens is the freedom of speech. In theory, the concept is simple – the First Amendment to the U.S. Constitution grants us the liberty to speak our minds without fear of being censored or persecuted. But in reality, workers' freedom of speech, for some employers, is regarded as a disposable annoyance and disregarded in the workplace.

The United States Supreme Court has recognized that it is a form of coercion to make people listen and that no one has the right to press even 'good' ideas on an unwilling recipient. Those are violations of the First Amendment. Yet that is exactly what happens when employers convene mandatory meetings during work hours to discuss the employer's position on religious or political matters. SB 440 protects workers' constitutional rights of freedom of speech and conscience by establishing a minimum state labor standard that allows employees to refuse to attend captive audience meetings and refuse to listen to speech communicating the employer's opinion concerning religious or political matters. It's a necessary remedy to protect employees' freedom of speech.

**CAPTIVE AUDIENCE MEETINGS**

Captive audience meetings usually take place in response to union organizing drives. When faced with the possibility that workers may wish to form a union, three-quarters of employers hire attorneys and consultants operating in the multi-billion "union avoidance" industry to orchestrate and implement anti-union campaigns.<sup>1</sup> These so-called "persuaders" help employers keep their businesses union-free by either defeating union organizing campaigns or assisting with decertification efforts to unseat an existing union. They provide anti-union talking points, flyers and other services, including training managers about how to conduct "captive audience" meetings.

A captive audience meeting is a mandatory closed-door meeting held during work hours by the employer. It is designed to discourage workers from joining the union by instilling fear. These meetings are intimidating in nature because they are often conducted one-on-one or in small groups by managers who are responsible for supervising the employees. In addition to dissuading employees from joining a union, managers use these meetings to identify and build lists of employees who support the union.

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<sup>1</sup> [http://www.iwj.org/wp-content/uploads/2014/03/JohnLogan12\\_2006UnionAvoidance.pdf](http://www.iwj.org/wp-content/uploads/2014/03/JohnLogan12_2006UnionAvoidance.pdf)

Though often described as informational by the employer, these meetings are always coercive. They often include management exhortations, carefully scripted to fall within the wide latitude afforded employers under federal law, to deter workers from choosing a union. These meetings unfairly present lies and misrepresentations without the employee being afforded an alternative opinion or the option to leave. Common threats and mistruths uttered by employers during captive audience meetings include:

- *If workers vote to form a union, they will lose your jobs.*
- *Having a union will force the company to close, lay off workers, outsource the jobs and/or move to another state.*
- *The employer will be forced to cut wages and/or hours if workers vote to form a union.*
- *Voting for a union will endanger workers' legal work status.*
- *The union will undermine labor-management relations and prohibit workers from speaking directly with their employer.*
- *The union isn't interested in helping workers. It only cares about money and will put a lien on workers' homes if they don't pay union dues.*

Almost without limits, employers can force workers to attend these captive-audience meetings. Management can impose a "no questions or comments" rule and discipline any worker who speaks up during a captive audience meeting. **Employers can even fire workers who do not attend or get up and leave.**

An Economic Policy Institute study found that 63% percent of employers interrogate workers in one-on-one captive audience meetings and 54% of employers threaten workers in such meetings.<sup>2</sup> It also found the average employer holds more than 10 captive audience meetings during a union organizing drive.

Connecticut employers have frequently utilized captive audience meetings and other hostile tactics when workers have sought to form a union. The most recent examples include:

- **Foxwoods Casino cleaners** unionized last year. Management responded with inflammatory misinformation and captive audience meetings, even threatening workers' immigration status.
- **Becton Dickinson & Company manufacturing workers** in Canaan tried to unionize last year. Management hired out-of-state "union avoidance" firms to hold 2-3 captive audience meetings per day.
- **Severance Foods workers** in Hartford were inundated with incendiary half-truths and forced to endure many captive audience meetings before voting to form a union in February 2018.
- **Stamford Hilton Hotel service workers**, most of them female immigrants, were forced to attend one-on-one captive audience meetings before winning a union election in December 2017.
- **Stamford Sheraton Hotel workers** voted to form a union earlier this year after suffering a brutal campaign of captive audience meetings and other intimidation techniques designed by Cruz & Associates, a "union avoidance" firm previously employed by Donald Trump. Some individual workers were subjected to 4:1 captive audience meetings, i.e. four managers to one employee.

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<sup>2</sup> <http://www.epi.org/publication/bp235/>

SB 440 protects employees and their right to exercise their freedom of speech and join a union. It prohibits employers from coercing employees to attend or participate in meetings for the purpose of forcing the employers' position on politics, religion, or labor organizing activities. ***It does not restrict the employers' free speech. Rather, it allows an employee the right -- when the subject of the meeting is about the employers' position on politics, religion or labor organizing -- to stop listening, to walk away and not participate without the fear of facing discipline or termination.***

#### **EMPLOYER-COERCED POLITICAL SPEECH**

While much of the focus on this bill has been about protecting workers' freedom of speech around union organizing issues, employees also need protection from employers' forced political speech.

The U.S. Supreme Court's 2011 *Citizens United v. Federal Election Commission* decision not only allowed corporations to spend unlimited dollars from their corporate treasuries on political campaigns; it also expanded the First Amendment rights of corporations, giving employers greater ability to force their political views in the workplace. They can require employees to attend meetings about politics, or even specific candidates. They can encourage employees to make political contributions to candidates and they can distribute "voter guides" to employees that make the employer's political positions crystal clear.

As you heard in earlier testimony from Alexander Hertel-Fernandez, political scientist at Columbia University's School of International and Public Affairs, companies frequently try to persuade and mobilize their employees to support politicians and policies beneficial to the corporation. In 2012, the CEO of Westgate Resorts said, he would have "no choice but to reduce the size of this company" if President Barack Obama were reelected. The CEO of a software company in Florida warned that "if the U.S. re-elects President Obama, [the company's] chances of staying independent are slim to none." Even Mitt Romney encouraged business owners to "make it very clear to your employees what you believe is in the best interest of your enterprise and therefore their job and their future in the upcoming elections."<sup>3</sup>

A 2015 survey of about 1,000 U.S. employees conducted by a Harvard researcher found that 25 percent said they experienced some kind of political message from their employer, ranging from simple voter registration efforts at work to messages about political candidates. Seven percent of the respondents said they felt these messages were "somewhat coercive" and another 7 percent said "strongly coercive."<sup>4</sup>

Federal law has not kept up with the changes brought by *Citizens United*. In 2016, the Federal Election Commission deadlocked along party lines over whether to even investigate allegations that coal baron Robert Murray coerced employees at his company, Murray Energy Corporation, into making campaign contributions.<sup>5</sup>

There are no federal labor protections for employees who are fired or punished for refusing to participate in an employer's political agenda. Oregon and New Jersey have enacted laws that prohibit employers from terminating or disciplining employees who decline to participate in employer-sponsored activities or communications about religious or political matters. SB 440 would similarly shield Connecticut workers left exposed by gaps in the federal law.

#### **SB 440 DOES NOT IMPEDE THE EMPLOYER**

SB 440 does not infringe on employers' First Amendment rights. Rather, it affirms the employer's right to call an employee meeting at any time on any subject. It does not prevent employers or anyone else from discussing religion, politics or other topics. It only prohibits employers from firing or disciplining employees

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<sup>3</sup> <http://www.chicagotribune.com/business/ct-boss-politics-at-work-20161021-story.html>

<sup>4</sup> Ibid

<sup>5</sup> <https://prospect.org/blog/checks/fec-deadlocks-over-employer-political-coercion>

who leave the meeting because they do not wish to listen to the employer's opinions about religious or political matters. The employer still may:

- Discuss workplace issues and even encourage workers to contact elected officials on issues pertaining to the business, as long as participation is voluntary and the employer does not instruct employees about how to vote in an election.
- Invite elected officials to a staff meeting to discuss current events, stress the importance of voter registration or even encourage employees to volunteer on political campaigns, as long as participation is not mandatory.
- Invite employees to attend church services or participate in other religious events, as long as participation is not mandatory.
- Hold staff meetings to encourage voluntary participation in employer-sponsored charitable events and activities, e.g. the United Way, Girl Scouts, Special Olympics, etc.
- Call meetings to encourage employees to join the employer in community service activities, such as assembling playground equipment in a public park or cleaning up storm debris after a natural disaster.
- Encourage employees in staff meetings to voluntarily participate in a company-sponsored blood drive.

SB 440 expressly permits the employer to communicate information the law requires the employer to communicate and it expressly permits employers to convey information necessary for employees to perform their job duties.

SB 440 will not encourage businesses to leave the state. Time after time, studies have shown that businesses are attracted to a state or remain in a state based on the quality of its skilled and educated workforce, infrastructure investments, and the condition of its transportation systems, the tax environment, the quality of public schools and other key factors. Laws protecting workers' rights have not been a primary factor.

SB 440 protects a worker's fundamental right of freedom of speech against employers who misuse their authority by coercing speech concerning core matters of individual conscience unrelated to their jobs. We urge the Committee to provide much needed protection to those who have been subjected to employer harassment and intimidation that tread on their First Amendment rights. Please support SB 440. Thank you.